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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~512~~ 219.

THE TERRITORY OF HAWAII, APPELLANT,

vs.

OSAKI MANKICHI.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE TERRITORY OF HAWAII.

FILED JANUARY 10, 1902.
(15305.)

25275

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1 In the district court of the United States in and for the Territory of Hawaii.

In the matter of the application of Osaki Mankichi for a writ of habeas corpus.

PETITION.

To the honorable MORRIS M. ESTEE,
Judge of the district court of the United States in and for the Territory of Hawaii:

I.

The humble petition of Osaki Mankichi respectfully represents unto your honor and this honorable court that Osaki Mankichi has been a resident of the Territory of Hawaii and of the Hawaiian Islands for more than three years last past.

II.

That Osaki Mankichi was convicted of the infamous crime of manslaughter in the first degree at the May term of the circuit court of the first judicial circuit of the Territory of Hawaii, A. D. 1899, and that upon such conviction was sentenced to be imprisoned at hard labor for the term of ten years by the judge of the circuit court of the first judicial circuit in the Hawaiian Islands.

III.

That the said Osaki Mankichi is now confined and imprisoned in the Oahu convict prison, and is in the custody of the keeper of said prison and the high sheriff of this Territory, Arthur M. Brown, for the said offense under and by virtue of said conviction and sentence, and the mittimus, which said mittimus was delivered to said high sheriff on
2 the 22d day of May, 1899, a copy of which is attached hereto and made a part of this petition, and which your petitioner craves leave to make a part of this petition and to be considered by your honor upon this application for a writ of habeas corpus.

IV.

And your petitioner further respectfully represents and alleges that said conviction and sentence are absolutely void and contrary to the Constitution of the United States of America, and especially to Article V of said Constitution, in that the indictment which was presented and a true bill was found upon which your petitioner was tried, convicted, and sentenced was not presented to nor was a true bill found thereon by any grand jury duly summoned and acting at a term of the court, but the true bill upon said indictment was found by A. Perry, first judge of the circuit court of the first judicial circuit, presiding at the term, and the

indorsement upon said indictment is in the words and figures following, to wit:

"A true bill found this 4th day of May, A. D. 1899. (Signed) A. Perry, first judge of the circuit court, first judicial circuit, presiding at the term."

V.

Your petitioner further represents and alleges that said conviction and sentence is absolutely void and contrary to the Constitution of the United States in that your petitioner was tried by a jury composed of twelve men, but was convicted and the verdict therein was rendered by nine only of said jurors, three of said jurors who sat upon the trial of said cause dissenting from the said verdict, which will appear from the record
3 in said cause, and which your petitioner prays leave to offer in evidence on the hearing of this application for a writ of habeas corpus.

VI.

Your petitioner further alleges that he is now unlawfully imprisoned, detained, and restrained of his liberty, being confined in Oahu convict prison in the custody of the keeper of said prison and of the high sheriff of this Territory, Arthur M. Brown, esq., and by virtue of the mittimus issued out of the first judicial circuit of the Hawaiian Islands and under said conviction and sentence, which are absolutely void, being contrary to the Constitution of the United States, as hereinbefore set forth in this petition.

Wherefore your petitioner humbly prays that a writ of habeas corpus be issued by your honor, commanding said Arthur M. Brown, high sheriff of this Territory, to have and produce the body of said Osaki Mankichi before your honor and this honorable court, and that the said alleged cause of his imprisonment and detention and the constitutionality of his conviction and sentence may be inquired into, and in case said conviction and sentence are illegal and void that your petitioner may be discharged from such arrest and imprisonment, and as in duty bound your petitioner will ever pray.

(Signed in Japanese.) "OSAKI MANKICHI."

GEORGE A. DAVIS and
F. M. BROOKS,
Of Counsel for Petitioner.

4 TERRITORY OF HAWAII,
Island of Oahu, ss:

And now comes the above-named petitioner, Osaki Mankichi, and being sworn, says that he is the petitioner above named; that he has heard read the foregoing petition, which was fully explained to him, and that he knows the contents thereof and that the same is just and true.

(Japanese signature.) "OSAKI MANKICHI."

Subscribed and sworn to before me this 26th day of August, A. D. 1901.

[SEAL.] WADE WARREN THAYER,
Notary Public, First Judicial Circuit.

In the circuit court of the first judicial circuit of the Hawaiian Islands, May term, 1899.

THE REPUBLIC OF HAWAII
vs.
YAMANE MENCHIRO, IHARA ICHIGORO, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai.

Before Hon. A. Perry, first judge of said circuit court.

MITTIMUS.

The Republic of Hawaii to Arthur M. Brown, esq., marshal of the Republic of Hawaii, or his deputy, greeting:

Osaki Mankichi having been indicted in the circuit court of the first judicial circuit of the Hawaiian Islands, at the May term, 1899, thereof, under an indictment reading as follows:

"In the name of the Republic of Hawaii, first circuit, to wit: At a term of the circuit court, begun and holden at Honolulu, in the island of Oahu, within and for the first circuit of the Hawaiian Islands, on the first day of May, in the year of our Lord one thousand eight
6 hundred and ninety-nine, and continued by adjournment, from day to day, and from time to time, until the fourth day of said month. The attorney-general of the Republic of Hawaii, upon his official oath, presents that Yamane Nenchiro, Ihara Ichigoto, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai, all foreigners by birth, of Kahuku, district of Koolauloa, in the island of Oahu, and within the jurisdiction of this honorable court, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, with force and arms, feloniously, wilfully, and of their deliberate premeditated malice aforethought, did kill and murder one Chew Foon Wing, and did then and there and thereby commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided.

"And the attorney-general aforesaid, upon his official oath aforesaid, doth further say and present that the said Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai, all foreigners by birth, and all of Kahuku, in the district of Koolauloa, island of Oahu, and within the jurisdiction of this honorable court, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, with force and arms, feloniously, wilfully, and of their malice aforethought, without authority, justification, or extenuation by law, and with extreme atrocity and cruelty, did kill and murder one Chew Foon Wing, and did then and there and thereby commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided.

"And the attorney-general aforesaid, upon his official oath aforesaid, doth further say and present that the said Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai,
7 all foreigners by birth, of Kahuku, in the district of Koolauloa, island of Oahu, at Kahuka, in the district of Koolauloa, island of Oahu, and within the jurisdiction of this honorable court, on the 26th day of March, in the year of our Lord one thousand eight hundred and

ninety-nine, with force and arms in and upon one Chew Foon Wing, feloniously, wilfully, and of their deliberate, premeditated malice aforethought, and without authority, justification, or extenuation by law, did make an assault with knives, hoes, clubs, sticks, stones, and other weapons to the attorney-general unknown, and did then and there feloniously, wilfully, and of their deliberate premeditated malice aforethought, without authority, justification, or extenuation by law, strike, cut, beat, and bruise the said Chew Foon Wing, then and there and thereby giving to the said Chew Foon Wing certain mortal wounds, of which said mortal wounds he, the said Chew Foon Wing, on the same day, died, and that so the said Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Uahichi, and Fujimoto Nehai at the time and place aforesaid, and in the manner and form aforesaid, did kill and murder the said Chew Foon Wing, and then and there and thereby did commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided.

"And the attorney-general aforesaid, upon his official oath aforesaid, doth further say and present that the said Yamane Nenchiro, Ichigoro, Osaki Mankichi, Danjro Uahichi, and Fujimoto Nehai, all foreigners by birth, of Kahuku, in the district of Koolauloa, island of Oahu, at Kahuku, in the district of Koolauloa, island of Oahu, and within the jurisdiction of the honorable court, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, with force and arms, in and upon one Chew Foon Wing, feloniously, wilfully,
8 and of their malice aforethought, and without authority, justification, or extenuation by law, and with extreme atrocity and cruelty, did make an assault with knives, hoes, clubs, sticks, stones, and other weapons to the attorney-general unknown, and did then and there feloniously, wilfully, and of their malice aforethought, without authority, justification, or extenuation by law, and with extreme atrocity and cruelty, strike, beat, and bruise the said Chew Foon Wing, then and there and thereby the said Chew Foon Wing mortal wounds, for which said mortal wounds, he, the said Chew Foon Wing, on the same day, died. And so said Yamen Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai, at the time and place aforesaid, and in the manner and form aforesaid, did kill and murder Chew Foon Wing, and then and there and thereby did commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided.

(Signed) "HENRY E. COOPER,
"Attorney-General.

"A true bill found this 4th day of May, A. D. 1899.

(Signed) "A. PERRY,
"First Judge of the Circuit Court of the First Judicial Circuit, Presiding at the Term."

And the said Osaki Mankichi having been convicted in the said circuit court of the first circuit at the May term, 1899, thereof, under said indictment, of the offense of manslaughter in the first degree, and having been by said circuit on this day sentenced to be imprisoned at hard labor for the term of twenty years,

You are hereby ordered to take said Osaki Mankichi into your custody and to cause said sentence to be executed. Hereof fail not.

9 Witness the honorable A. Perry, first judge of the circuit court of the first circuit, and the seal of said court, at Honolulu, this 22nd day of May, A. D. 1899.

[SEAL.]

(Signed) J. A. THOMPSON,
Clerk of the Circuit Court of the First Circuit.

Let this writ issue returnable before me in the open court of Tuesday, the third day of September, at the hour of two o'clock in the afternoon of said day, and let a copy of this petition, order, and writ be served within two days from the date hereof upon Col. J. C. Baird, U. S. district attorney, and E. P. Dole, the attorney-general of this Territory, or his deputy, John W. Cathcart.

Dated this 26th day of August, A. D. 1901.

MORRIS M. ESTEE,
Judge of the District Court of the United States for the Territory of Hawaii.

(Endorsed:) Title of court and cause. Filed August 26th, 1901. W. B. Maling, clerk. By F. C. Handy, deputy clerk.

10 OFFICE OF THE UNITED STATES MARSHAL
FOR THE TERRITORY OF HAWAII.

I hereby certify that on the 26th day of August, A. D. 1901, I received the writ of habeas corpus hereto attached, and that on the 26th day of August, A. D. 1901, at Honolulu, H. T., in this district, I personally served the said writ, by delivering to and leaving a certified copy thereof with Arthur M. Brown, high sheriff of the Territory of Hawaii.

Dated Honolulu, August 26th, 1901.

D. A. RAY,
U. S. Marshal,
By E. R. HENDRY,
Chief Office Deputy U. S. Marshal.

The President of the United States of America to Arthur M. Brown, esq., high sheriff of the Territory of Hawaii, and to the keeper of Oahu Convict Prison:

We command you and each of you that the body of Osaki Mankichi, by you detained and imprisoned, as is charged, you have before the honorable Morris M. Estee, judge of the district court of the United States for the Territory of Hawaii, at two o'clock in the afternoon on Tuesday, the third day of September, A. D. 1901, at the district court room in the judiciary building in Honolulu, together with the cause of the detention of the said Osaki Mankichi, to undergo and receive what our said judge shall consider concerning him in this behalf, and have you then and there this writ.

Witness the honorable Morris M. Estee, judge of the district court of the United States in and for the Territory of Hawaii, this 26th
11 day of August, A. D. 1901.

[SEAL.] W. B. MALING,
Clerk of the District Court of the United States in and for the Territory of Hawaii,
By F. C. HANDY,
Deputy Clerk.

(Endorsed:) Title of court and cause. Filed August 26th, 1901. W. B. Maling, clerk.

12 In the district court of the United States in and for the Territory of Hawaii.

In the matter of application of Osaki Mankichi for a writ of habeas corpus.

RETURN TO WRIT OF HABEAS CORPUS.

Now comes Arthur M. Brown, high sheriff of the Territory of Hawaii, and makes thus his return to the writ of habeas corpus herein issued and respectfully certifies to this honorable court as follows:

1st. I am the duly appointed and qualified high sheriff of the Territory of Hawaii; that I have said Osaki Mankichi in my custody, and, in obedience to the commands of the said writ, I now produce said Osaki Mankichi before this honorable court.

2nd. That said Osaki Mankichi at the time of the service of the writ herein was in my custody and detained by me at the Oahu jail in the city of Honolulu, island of Oahu, Territory of Hawaii, and is now so in my custody and detained by me, under and by virtue of the judgment of the circuit court of the first circuit, Republic of Hawaii, a court of general jurisdiction held at said Honolulu, in and for said circuit, on the 1st day of May, A. D. 1899, which said judgment was rendered upon a verdict duly returned into court convicting the said Osaki Mankichi of manslaughter in the first degree, in a cause entitled "The Republic of Hawaii against Yamane Nenchiro, Osaki Mankichi, and others," a true copy of which verdict is attached hereto, marked "Exhibit A,"
13 made a part hereof, and referred to hereby; that the trial of said Osaki Mankichi in which said verdict was rendered was had upon an indictment, duly found by law, charging said Osaki Mankichi with murder in the first degree, which said indictment is to set forth in full in the mittimus hereafter alleged, and reference thereto is hereby made; and said Osaki Mank'chi was and is also in my custody and detained by me as such high sheriff, under and by virtue of a mittimus issued out of said circuit court in pursuance of said judgment of conviction, a true copy of which said mittimus is hereto attached as a part hereof, marked "Exhibit B," and is hereby referred to.

3rd. And I, the said Arthur M. Brown, high sheriff of the Territory of Hawaii, do make a further return, and allege, as I am advised, that the said judgment of conviction as hereinbefore set forth, and the aforesaid

mittimus and the custody and imprisonment of the said Osaki Mankichi are lawful and fully warranted by the constitution and laws of the Republic of Hawaii, then in force and effect, and by the act of the Congress of the United States creating the Territory of Hawaii; and I do further allege, as I am advised, that those provisions of Article V and VI of the amendments of the Constitution of the United States relating to presentments and indictments by grand juries and to trial by petit juries were not in force and effect within the Republic of Hawaii, or the Hawaiian Islands, nor applicable thereto, at the time of the indictment, trial, and conviction of the said Osaki Mankichi; and that said Osaki Mankichi is not in custody, imprisoned, or restrained of his liberty contrary to the Constitution of the United States.

4th. And I further certify that I make this return as high sheriff of the Territory of Hawaii.

14 Dated at Honolulu, Sept. 3, 1901, A. D.

A. M. BROWN,
High Sheriff of the Territory of Hawaii.

15 (Copy.)

EXHIBIT A.

In the circuit court of the first circuit, Territory of Hawaii, May term, 1899.

Judge A. Perry, presiding.

THE REPUBLIC OF HAWAII
vs.
YAMANE NENCHIRO, IHARA ICHIGORO, OSAKI Mankichi, Danjro Yahichi, and Fujimoto Nehai. } Verdict.

We, the jury in the above-entitled cause, find the defendant Yamane Nenchiro guilty of manslaughter 3 degree, 2 dissenting.

Find the defendant Ihara Ichigoro guilty of murder first degree, 2 dissenting.

Find the defendant Osaki Mankichi guilty of manslaughter first degree, 3 dissenting.

Find the defendant Danjro Yahichi not guilty, 3 dissenting.

Find the defendant Fujimoto Nehai not guilty, 2 dissenting, dissenting.

(Signed) F. W. MCCHESNEY, *Foreman.*

HONOLULU, OAHU, *18 May, 1899.*

16 EXHIBIT B.

In the circuit court of the first judicial circuit of the Hawaiian Islands, May term, 1899.

THE REPUBLIC OF HAWAII
vs.
YAMANE NENCHIRO, IHARA ICHIGORO, OSAKI Mankichi, Danjro Yahichi, and Fujimoto Nehai.

Before Hon. A. Perry, judge of said circuit court.

MITTIMUS.

The Republic of Hawaii to Arthur M. Brown, esq., marshal of the Republic of Hawaii, or his deputy, greeting:

Osaki Mankichi having been indicted in the circuit court of the first judicial circuit of the Hawaiian Islands, at the May term, 1899, thereof, under an indictment reading as follows:

"In the name of the Republic of Hawaii, first circuit, to wit: At a term of the circuit court begun and holden at Honolulu, in the island of Oahu, within and for the first circuit of the Hawaiian Islands, on the first day of May, in the year of our Lord one thousand eight hundred and ninety-nine, and continued by adjournment from day to day and from time to time, until the fourth day of said month, the attorney-general of the Republic of Hawaii, upon his official oath, presents that Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai, all foreigners by birth, of Kahuku, district of Koolauloa, in the island of Oahu, at Kahuku, district of Koolauloa, in the island of Oahu, and within the jurisdiction of this honorable court, on the 26th day of March, A. D. 1899, with force and arms, feloniously, wilfully, and of their deliberate premeditated malice aforethought, did kill and murder one Chew Foon Wing, and then and there and thereby commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided.

"And the attorney-general aforesaid, upon his official oath
17 aforesaid, doth further say and present, that the said Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai, all foreigners by birth, and all of Kahuku, in the district of Koolauloa, island of Oahu, at Kahuku, in the district of Koolauloa, island of Oahu, and within the jurisdiction of this honorable court, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, with force and arms, feloniously, wilfully, and of their malice aforethought, without authority, justification, or extenuation by law, and with extreme atrocity and cruelty, did kill and murder one Chew Foon Wing, and did then and there and thereby commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided.

"And the Attorney-General aforesaid, upon his official oath aforesaid, doth further say and present that the said Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai, all foreigners by birth, of Kakuhu, in the district of Koolauloa, island of Oahu, at Kahuku, in the district of Koolauloa, island of Oahu, and

within the jurisdiction of this honorable court, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, with force and arms in and upon one Chew Foon Wing, feloniously, wilfully, and of their deliberate premeditated malice aforethought, and without authority, justification or extenuation by law, did make an assault with knives, hoes, clubs, sticks, and stones, and other weapons to the Attorney-General unknown, and did then and there feloniously, wilfully and of their deliberate premeditated malice aforethought, without authority, justification, or extenuation by law, strike, cut, beat, and bruise the said Chew Foon Wing, then and there, and thereby giving to the said Chew Foon Wing certain mortal wounds, of which said mortal wounds he, the said Chew Foon Wing, on the same day died, and that so the said Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai, at the time and place aforesaid, and in the manner and form aforesaid, did kill and murder the said Chew Foon Wing, and then and there and thereby did commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided.

"And the Attorney-General aforesaid, upon his official oath aforesaid, doth further say and present that the said Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi and Fujimoto Nehai, all foreigners by birth of Kahuku, in the district of Koolualoa, island of Oahu, at Kahuku, in the district of Koolauloa, island of Oahu, and within the jurisdiction of this honorable court, on the 26th day of March, in the year of our Lord one thousand eight hundred and ninety-nine, with force and arms, in and upon one Chew Foon Wing, feloniously, wilfully, and of their malice aforethought, and without authority, justification, or extenuation by law, and with extreme atrocity and cruelty did make an assault with knives, hoes, clubs, sticks, stones, and other weapons to the Attorney-General unknown, and did then and there feloniously, wilfully, and of their malice aforethought, without authority, justification or extenuation by law, and with extreme atrocity and cruelty, strike, beat, and bruise the said Chew Foon Wing, then and there, and thereby the said Chew Foon Wing, mortal wounds, of which said mortal wounds he, the said Chew Foon Wing on the same day died. And so the said Yamane Nenchiro, Ihara Ichigoro, Osaki Mankichi, Danjro Yahichi, and Fujimoto Nehai, at the time and place aforesaid, and in the manner
18 and form aforesaid, did kill and murder said Chew Foon Wing, and then and there, and thereby did commit the crime of murder in the first degree, contrary to the form of the statute in such case made and provided.

(Signed) "HENRY E. COOPER,
"*Attorney-General.*

"A true bill found this 4th day of May, A. D. 1899.

(Signed) "A. PERRY,
"*First Judge of the Circuit Court of the First*
"*Judicial Circuit, Presiding at the term.*"

And the said Osaki Mankichi, having been convicted in the said circuit court at the May term, 1899, thereof, under said indictment, of the offense of manslaughter in the first degree, and having been by said

circuit court of the First circuit on this day sentenced to be imprisoned at hard labor for the term of twenty years.

You are hereby ordered to take said Osaki Mankichi into your custody, and to cause said sentence to be executed. Hereof fail not.

Witness the honorable A. Perry, first judge of the circuit court of the first circuit and the seal of said court, at Honolulu, this 22d day of May, A. D. 1899.

[SEAL.] (Signed) J. A. THOMPSON,
Clerk of the Circuit Court of the First Circuit.

(Endorsed:) Title of court and cause. Filed September 3, 1901. W. B. Maling, Clerk. By F. C. Handy, Deputy Clerk.

19 [From minutes of U. S. district court, September 3, 1901, page 363.]

Title of court and cause.

Now comes the high sheriff, A. M. Brown, respondent herein, with his counsel, and produced the body of petitioner and made return to the writ herein.

And thereupon counsel for petitioner and the respondent commenced the argument of the matter, and the hour for adjournment having arrived, the future hearing is continued until Wednesday, Sept. 4, 1901, at 10 a. m.

20 [From the minutes of U. S. district court, September 4, 1901, page 364.]

Title of court and cause.

Now again comes the respondent herein with his counsel and his petitioner, and his counsel also being present, the matter is continued by further argument and the hour for adjournment having arrived, it is ordered continued until Thursday, September 5th, 1901.

21 [From minutes of district court of the United States, September 5th, 1901, page 365.]

Title of court and cause.

On this day again comes the respondent and the petitioner herein with their respective counsel, and the matter is proceeded with by further argument, at the conclusion of which it is submitted to the court for decision, and the court took the matter under advisement and ordered that counsel have until September 7th, 1901, at noon to submit points and authorities.

22 In the United States court in and for the Territory of Hawaii.

In the matter of the application of Osaki Mankichi for a writ of habeas corpus.

George A. Davis, Esq., and F. M. Brooks, appearing as counsel for petitioner; John W. Cathcart, Assistant Attorney-General, appearing as counsel for high sheriff of the Territory, Arthur M. Brown.

OPINION OF THE COURT.

This is an application for a writ of habeas corpus arising upon the petition of one Osaki Mankichi, a Japanese.

The evidence, oral and documentary, shows that on the 4th day of May, 1899, a presentment was filed against the petitioner by the then circuit judge of the first circuit of the Territory of Hawaii, and without the intervention of a grand jury, charging him with the crime of murder; that afterwards in the May term of that court, of the same year, he was tried on the said presentment and convicted of the crime of manslaughter in the first degree. The verdict was returned by nine out of the twelve jurors. On the 22nd day of May, 1899, he was, by the said court, sentenced to twenty years imprisonment at hard labor.

Petitioner now seeks his discharge upon the ground that he is being illegally imprisoned, because of the fact that he was not indicted
23 by a grand jury, nor convicted by the unanimous verdict of a jury of twelve men, as is required by the Constitution of the United States, it being claimed that the Constitution of the United States was in force in these islands during the period covered by the trial, conviction, and sentence of petitioner, and that Articles V, VI, and VII of the amendments to the Constitution were thus violated.

(I) The first point made by the learned assistant attorney-general for the Territory is that this court has no jurisdiction to act and determine upon the questions involved in this matter, because of writ of error should be sued out of the Supreme Court of the United States by the petitioner herein; that whatever may have been the action of the Territorial courts, the United States court ought not to interfere; that this case is not one of sufficient gravity to call for the interposition of this court on habeas corpus.

This is a Federal question raised in the territory of the United States, which is governed by Federal law under the Constitution and statutes of the United States. The authorities referred by the deputy attorney-general, sustaining his position against this court's assuming jurisdiction in this proceeding, are not in point. Not one of the decisions cited relate to this class of cases. This Territory is under the control of Congress and is not an independent State with a Constitution and local statutes governing the trial and conviction or acquittal of persons charged with crime. Where a State is a party and where a constitutional question is involved, a writ of error should, save in exceptional cases, be sued out of the Supreme Court of the United States, because of a delicate nature of a conflict of State and National jurisdictions. Here there can be no such conflict. I have been unable to find any authori-
24 ties of like import where a conviction is had in a Territory. Territorial action alone is involved here. The courts which have considered this matter before are all territorial courts, the alleged conviction of petitioner occurring under territorial law.

It should be here said that the territorial situation of Hawaii is peculiar. We are by land and sea over five thousand miles from the capital of our country and practically the judicial officers of this Territory are beyond the immediate range of appellate judicial tribunals. So all judicial officers here should be especially interested in maintaining

public law in this Territory and more particularly in maintaining the Constitution and statutes of the United States applicable hereto.

In this habeas corpus matter there is a wide difference of opinion among the Territorial judges. Both the supreme and circuit courts differ with each other, and the members of the supreme court differ among themselves; and especially so upon the question of the relation which this Territory bears to the Constitution and laws of the United States; for instance, the supreme court of this Territory held in the very recent case of Honomu Sugar Co. vs. Sayewiz (12 Haw., 96), that certain amendments of the Constitution of the United States were not in force here between the 7th day of July, 1898, and the 14th day of June, 1900, namely, Articles V, VI, and VII, and XIII, which articles relate to indictment by a grand jury for infamous crimes, to a common-law jury trial, and to the existence of slavery in this Territory of the United States. While the supreme court decided in the case of Ex parte Edwards (13 Haw., 32) that no person could be put up on trial for infamous crime in the Hawaiian Islands after August 12, 1898 (the date of the raising of the American flag here) without having been first indicted by a grand jury, nor could he be convicted of such crime
25 save by the unanimous verdict of a jury of twelve.

It was further held by the supreme court of the Territory on the 5th day of June, 1899, in the case of Spencer vs. Collector of Customs (12 Haw., 66), that Hawaii could register vessels although the Territory was annexed to and formed a part of the United States.

This was practically overruled by the Attorney-General of the United States, who, in a written opinion (22 Op. Atty. Gen., 578), instructed the Secretary of the Treasury that—

"With due respect to the judgment of the supreme court of Hawaii, I am unable to admit that an Hawaiian register can now be issued to a vessel, and the flag of Hawaii, the usual token of registration, be flown by her."

From these decisions it is clear there is a wide divergence of opinion on the part of the members of the supreme court of the Territory as to the constitutional question involved herein, and as to whether or not the people of this Territory were, during the period between July 7, 1898, and June 14th, 1900, living in an American Territory and subject to such laws as were not inconsistent with joint resolution of annexation "nor contrary to the Constitution of the United States."

The familiar rule of stare decisis does not seem to receive recognition by the supreme court of the Territory, for the court decides one way at one time and another way at other times upon questions of the gravest importance and which cases involve identically the same principle. The very uncertainty of that court's opinions tends to disturb and unsettle the public mind as to the National Constitution and its application to the people of and conditions in this Territory, and is a strong inducement for this court to exercise its discretion in taking jurisdiction of this proceeding.

26 It is argued that the district and circuit courts of the United States are courts of original and limited jurisdiction, which is true; but the United States statutes make it the duty of the United States district and circuit judges to issue the writ of habeas corpus when justice

demands it, or when "a person is in custody in violation of the Constitution." (Section 753, Rev. Stats. U. S., 2nd ed.)

"It is the duty of the courts to be watchful of the constitutional rights of the citizen." (Boyd vs. U. S., 116 U. S., 616 to 636.)

So constitutional provisions for the security of persons and property should be liberally construed. (Id., 636.)

As was said by the Supreme Court of the United States in the case of Walker vs. S. P. R. R. Co., 165 U. S., quoting from page 595–6:

"We deem it unnecessary to consider the contention of defendant in error that the Territorial courts are not courts of the United States and that the seventh amendment is not operative in the Territories, for in the act of April 7, 1874, c. 80 (18 Stat., 27), Congress, legislating for all the Territories, declared 'that no party shall be deprived of the right of trial by the jury in cases cognizable at common law;' and while this may not in terms extend all the provisions of the seventh amendment to the Territories, it does secure all the rights of trial by jury as they existed at common law."

If it be true that the Constitution and the act of Congress referred to in Walker vs. S. P. R. R. Co., supra, has been nullified by the local Territorial courts, then there should be an immediate remedy.

The learned Assistant Attorney-General on the argument pressed upon the attention of the court the fact that on October 20th, 1900, this court dismissed the petition for a writ of habeas corpus presented in the case of In re Marshal on the ground of lack of jurisdiction. In that case the petitioner had been convicted of a misdemeanor and no Federal
27 question was involved; the court then saying generally that "only in very rare and extreme cases will it review upon habeas corpus the judgments or verdicts found in the highest Territorial courts of the Territory." And this court is still of the same opinion.

The question now presented is, Is this an exceptional case? I am compelled to believe that it is. Whatever the intention of the local Territorial courts, their decisions upon this question are an attack upon the constitutional rights of the citizen, affecting life and liberty, which are thereby made insecure.

In view of all the circumstances, therefore, I think it would be in furtherance of public justice for me to exercise my discretion by assuming jurisdiction in this proceeding. I shall therefore consider the case under the writ.

The right of appeal in habeas corpus cases from the Territorial circuit to the Territorial supreme court this court will not consider. That is a matter entirely within the province of the Territorial courts.

So, also, as to the objections submitted in relation to Mr. Justice Parry sitting as one of the appellate judges in this case, originally tried by him while a circuit judge. That is largely a matter of discretion on his part, and I will not assume to question the wisdom of such discretion.

(II) Petitioner claims that he is in custody in violation of the Constitution of the United States, in that he was tried and convicted of an infamous crime without an indictment by a grand jury, and by a verdict of less than twelve jurors, i. e., by nine of the twelve jurors. The specific
articles of the Constitution claimed to have been violated by such
28 conviction are Articles V, VI, and VII of the amendments thereto.

There is no question as to the infamous character of the crime with which he was charged.

The joint resolution of both Houses of Congress annexing the Hawaiian Islands, passed by Congress July 7th, 1898, prescribes, among other things, that—

"The Hawaiian Islands and their dependencies are hereby annexed as a part of the territory of the United States, and are subject to the sovereign dominion thereof, and all and singular the property and rights hereinbefore mentioned are vested in the United States of America."

After providing for the disposition of the revenues of the islands and for the future enactment by Congress of special public-land laws, the resolution then prescribes:

"The municipal legislation of the Hawaiian Islands not inconsistent with this resolution, nor contrary to the Constitution of the United States, shall remain in force until the Congress of the United States shall otherwise determine." (Vol. 30, U. S. Stats., 750.)

Municipal law is defined to be—

"The rule of law by which a particular district, community, or nation is governed." (1 Blackstone's Comm., 44; 1 Kent's Comm., 447; 2 Burrell's Law Dictionary, 215.)

The resolution of annexation of Hawaiian Islands as passed by Congress prescribes that "they are annexed as a part of the territory of the United States" and are "subject to the sovereign dominion thereof," and on August 12th, 1898, the American flag was raised on the islands. It matters not, technically, whether the Constitution followed the flag or followed American sovereignty here. With American sovereignty came all of American law not especially reserved by the joint resolu-
29 tion of annexation. It goes without saying that two sovereignties could not exist here at the same time, and when the resolution of annexation provided that "the municipal legislation of the Hawaiian Islands not inconsistent with this joint resolution nor contrary to the Constitution of the United States should remain in force," it meant that all municipal legislative enactments of the Republic of Hawaii contrary thereto should be abrogated. No reservation was made in the joint resolution of Articles V, VI, and VII of the amendments to the Constitution, relating to indictments or trial by jury in common-law or criminal cases.

It shows that American sovereignty not only prevailed here, as elsewhere in the Territories of the United States, but that nothing could be done or permitted here contrary to the Constitution of the United States, excepting as expressly provided in the joint resolution of annexation. This annexation was not, as claimed by the supreme court of the Territory in the case of Peacock vs. Republic of Hawaii (12 Haw., 33), in a transition of inchoate state, but was complete, and the Constitution came with annexation and became and ever since has been the supreme law of this Territory. This is of paramount interest to the people of the Territory, as it secures to all the equal protection of life, liberty, and property, which are fundamental rights, and chief among which is the trial by jury.

It appears that the petitioner was indicted for the crime of murder

under an indictment presented by the prosecuting officer of the Territory and found by the circuit judge of the circuit court, under the provisions of section 616 of the penal laws of 1897 of the Republic of Hawaii, which reads as follows:

"The necessary bills of indictment shall be prepared by a legal prosecuting officer and be duly presented to the presiding judge of the court before the arraignment of the accused, and such judge shall, after examination, certify upon each bill of indictment whether he finds the same a true bill or not."

30 The petitioner was then tried upon the said indictment, and a verdict of conviction of manslaughter was rendered by nine out twelve jurors who heard the case in accordance with section 1345 of the civil laws of 1897 of the Republic of Hawaii, which prescribes as follows:

"No jury, for the trial of any case, civil or criminal, shall be less than twelve in number; but when nine of such jury shall agree upon a verdict, they may render the same, and such verdict shall be as valid and binding upon the parties as if rendered by all twelve."

The questions then presented are:

Where the provision' of the penal and civil laws of the Republic of Hawaii under which this petitioner was indicted, tried, and convicted, "municipal legislation contrary to the Constitution of the United States;" or, in other words,

Could a person in the Territory of Hawaii, between the 7th day of July, 1898, and the 14th day of June, 1900, when the act for the government of the Territory of Hawaii went into effect, be legally tried for an infamous crime without having been first indicted by a grand jury as required by Article V of the amendments to the Constitution of the United States, or convicted by less than an unanimous verdict of twelve jurors, as provided by Articles VI and VII of said amendments?

Article V of the Constitution of the United States reads in part as follows:

"No person shall be held to answer for a capital crime, or otherwise infamous crime, unless on a presentment or indictment of a grand jury."

Even if this Constitutional provision had never been construed, the language is too plain for doubt.

31 It has been held by the Supreme Court of the United States that the fifth and sixth amendments to the Constitution were not designed as limits upon the State governments in reference to their own citizens, but are only restrictions upon the Federal power. (Barron vs. Baltimore, 7 Peters, 243; Thorington vs. Montgomery, 147 U. S., 490.)

The Hawaiian Islands were territory of the United States, "subject to the sovereignty thereof" and under the control of Congress, when the original proceedings in this matter were heard before the circuit court of the Territory.

Mr. Justice Bradley held, in the case of the Mormon Church vs. The United States (136 U. S., 1)—

"That the power of Congress over the Territories of the United States is general and plenary, arising from and incidental to the right to acquire the Territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the Territory or other property belonging to the United States. * * *

"It would be absurd to hold that the United States had power to acquire territory and no power to govern it when acquired."

To the same point let me add that it was recently decided in the case of Downes vs. Bidwell (181 U. S., 779), quoting with approval from the decision of Chief Justice Marshall in McCullough vs. Maryland (4 Wheaton, 316)—

"That the power over the Territories is vested in Congress without limitation, and this power has been considered the foundation upon which the Territorial Government rests."

As to Territorial authorities on questions of Territories being subject to Federal provisions, see Bradford vs. Terr. (1 Okl., 366); Walker vs. N. M. R. R. Co. (7 N. Mex., 282).

In the exercise of the plenary power conferred upon it Congress
32 provided, by the joint resolution of annexation, that all municipal legislation of the Republic of Hawaii "contrary to the Constitution of the United States" should be repealed, leaving in force all that was not in conflict therewith. No language could be plainer. I am constrained to hold that it was the intention of Congress to extend the Constitution, save as limited by the other provisions of the joint resolution, over these islands, and any other construction would be straining after that which does not appear in the language of the act.

As was said by the Supreme Court of the United States in the recent Insular cases (Downs vs. Bidwell, 181 U. S., 781):

"When the Constitution has been once formally extended by Congress to the Territories, neither Congress nor the Territorial legislature can enact laws inconsistent therewith." And if Congress can not control the constitutional rights of citizens after they have once been extended to them in the Territories, how can the Territories themselves do this through their courts or otherwise?

See Thompson vs. Utah (170 U. S.), where the court, at page 349, says:

"Assuming that the provisions relating to trials for crimes and to criminal prosecutions apply to the Territories of the United States, the next inquiry is whether the jury referred to in the original Constitution and in the sixth amendment thereto is a jury constituted as it was at common law of twelve persons, neither more nor less . This question must be answered in the affirmative."

Quoting approvingly from Springville vs. Thomas (166 U. S., 707), where the court says:

"In our opinion the seventh amendment secured unanimity in finding a verdict, as an essential feature of trial by jury in common-law cases; and the act of Congress could not impart the power to change the constitutional rule and could not be treated as attempting to do so."

And again, on page 355 (Thompson vs. Utah, supra), the court
33 says:

"The Constitution of the United States gave the accused at the time of the commission of the offense a right to be tried by a jury of twelve persons, and made it impossible to deprive him of his liberty except by the unanimous verdict of such jury."

See also Wester vs. Reid, 11 How., 437, 460; American Publishing Co. vs. Fisher, 166 U. S., 464, 468.

The finding of a true bill by a circuit judge, or in any other manner than by the indictment of a grand jury properly and legally empowered to act in the premises, is in direct violation of the provisions of Article V of the amendments to the Constitution of the United States, and any person in this Territory found guilty of an infamous crime without such indictment by a grand jury is illegally convicted and should be released on habeas corpus. (Ex parte Bain, 121 U. S., 1; Ex parte Parks, 93 U. S., 18; Callon vs. Wilson, 127 U. S., 540.)

It is fallacious to attempt to limit the force of the Constitution in this Territory, or, in view of the clear intent of the resolution of annexation, to curtail the constitutional rights of the citizen. The pointing out to the people, as the supreme court of the Territory has done, that the Constitution "is not here in all its fullness," without stating what parts are and what parts are not here, simply befogs the question, and the argument of the assistant attorney-general of the Territory that trial by jury is not one of the fundamental propositions of the Constitution is contrary to the settled opinions of such illustrious American jurists as Marshall, Story, and Kent, and also of the leading American statesmen who assisted in framing those amendments to the Constitution.

The history of the trial by jury is the history of English and American civilization. It has come down to us from Magna Charta, and in
34 criminal cases every presumption is in favor of sustaining it.

I am of the opinion that the proceedings in the Territorial courts of Hawaii for the indictment and conviction of the petitioner herein were contrary to law and void, and that he is entitled to be discharged on habeas corpus.

Let the prisoner be discharged.

ESTEE, *Judge.*

Dated: September 12th, 1901.

(Endorsed:) Title of court and cause. Filed September 12th, 1901. W. B. Maling, clerk, by F. C. Handy, deputy clerk.

35 [From minutes of U. S. district court, September 12, 1901, page 371.]

Title of court and cause.

Counsel for respondent being present and also the petitioner with his counsel, the court rendered an opinion and decision adjudging that the proceedings in the Territorial courts of Hawaii for the indictment of the petitioner herein were contrary to the law and void, and ordered that the prisoner be discharged and go hence, to which decision counsel for respondent duly accepted and gave notice of appeal.

36 In the district court of the United States of America in and for the Territory of Hawaii.

In the matter of the application of Osaki Mankichi for a writ of habeas corpus.

ASSIGNMENT OF ERRORS.

Now comes the Territory of Hawaii by its attorney, Edmund P. Dole, attorney-general of said Territory, and says: That in the record and

proceedings in said cause and matter there is manifest error in this, to wit:

1st. The court erred in granting the application for a writ of habeas corpus.

2nd. The court erred in assuming jurisdiction of the said application for a writ of habeas corpus.

3rd. The court erred in holding that the defendant should have been indicted by a grand jury.

4th. The court erred in holding that the verdict of guilty should have been an unanimous verdict.

5th. The court erred in holding that Article V of the amend-
37 ments to the Constitution of the United States was in force and effect within the boundaries of the Hawaiian Islands at the time of the indictment, trial, conviction, and sentence of said Osaki Mankichi.

6th. The court erred in holding that Article VI of the amendments to the Constitution of the United was in force and effect within the boundaries of the Hawaiian Islands at the time of the indictment, trial, conviction, and sentence of said Osaki Mankichi.

7th. The court erred in holding that the sentence was null and void.

8th. For other errors appearing upon the record.

Whereas by the law of the land the said writ of habeas corpus should have been discharged and the prisoner remanded to Oahu prison to serve out his sentence.

And the Territory of Hawaii prays that the order and judgment aforesaid may be reversed and annulled and held for naught, and for such relief as may be proper in the premises.

EDMUND P. DOLE,
Attorney-General for the Territory of Hawaii.

(Endorsed:) Title of court and cause. Filed November 15th, 1901 W. B. Maling, clerk.

38 In the district court of the United States of America in and for the Territory of Hawaii.

In the matter of the application of Osaki Mankichi for a writ of habeas corpus.

APPEAL.

The Territory of Hawaii, by its attorney, Edmund P. Dole, attorney-general of said Territory, feeling itself aggrieved by the order and judgment entered on the 12th day of September, 1901, in the proceeding aforesaid, does hereby appeal from the said order to the Supreme Court of the United States, and prays that its appeal may be allowed and a transcript of the record of proceedings and papers upon which said order is made, duly authenticated, may be sent to the Supreme Court of the United States of America.

EDMUND P. DOLE,
Attorney-General for the Territory of Hawaii.

39 In the district court of the United States of America in and for the Territory of Hawaii.

In the matter of the application of Osaki Mankichi for a writ of habeas corpus.

ORDER ALLOWING APPEAL.

And now, to wit, on the 16th day of November, 1901, it is ordered that the appeal of the Territory of Hawaii be allowed as prayed for.

And it is further ordered that the said petitioner, Osaki Mankichi, may, at any time pending said appeal, be enlarged upon executing a recognizance with sureties in the sum of no bail dollars, to the satisfaction of the clerk of this court, for his appearance to answer judgment of the Supreme Court of the United States, and upon failure thereof to give bail, to remain in the custody of the jailor of Oahu prison, Territory of Hawaii.

MORRIS M. ESTEE, *District Judge.*

(Endorsed:) Title of court and cause. Appeal and order allowing appeal. Filed November 16th, 1901. W. B. Maling, clerk.

40 In the district court of the United States of America in and for the Territory of Hawaii.

In the matter of the application of Osaki Mankichi for a writ of habeas corpus.

BOND ON APPEAL.

Know all men by these presents that the Territory of Hawaii, as principal, and H. C. Austin and B. H. Wright, as sureties, are held and firmly bound unto Osaki Mankichi in the full and just sum of five hundred dollars, to be paid to the said Osaki Mankichi, his attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 16th day of November, in the year of our Lord one thousand nine hundred and one.

Whereas lately, at a session of the district court of the United States for the Territory of Hawaii, in the application made by the said Osaki Mankichi for a writ of habeas corpus, an order was entered

41 allowing the said writ of habeas corpus and discharging the said Osaki Mankichi from custody; and the said Territory of Hawaii having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the order aforesaid, and a citation directed to the said Osako Mankichi is about to be issued, citing and admonishing him to be and appear at the Supreme Court of the United States in the city of Washington, District of Columbia:

Now the condition of the above obligation is such that if the said Territory of Hawaii shall prosecute its said appeal to effect, and shall pay

all costs that may be awarded against it, then the above obligation is to be void; otherwise to remain in full force and virtue.

[SEAL.] THE TERRITORY OF HAWAII,
By STANFORD B. DOLE, *Governor.*

[SEAL.] H. C. AUSTIN.
[SEAL.] B. H. WRIGHT.

Attest:

HENRY P. COOPER,
Secretary of the Territory of Hawaii.

The foregoing appeal bond is hereby approved as to form, amount, and sufficiency of sureties this 16th day of November, 1901.

MORRIS M. ESTEE, *Judge.*

(Endorsed:) Title of court and cause. Filed, November 16th, 1901. W. B. Maling, clerk.

42 In the district court of the United States for the district of Hawaii.

In the matter of the application of Osaki Mankichi, for a writ of habeas corpus. No. 14.

CLERK'S CERTIFICATE TO RECORD.

UNITED STATES OF AMERICA,
District of Hawaii, ss:

I, Walter B. Maling, clerk of the district court of the United States for the district of Hawaii, do hereby certify the foregoing forty-one (41) typewritten pages, numbered from one (1) to forty-one (41), inclusive, to be a full, true, and correct copy of the record and all proceedings had in the foregoing and therein entitled cause as the same remains of record and on file in the office of the clerk of the district court of the United States for the district of Hawaii, and that the same constitutes the transcript of the record on appeal in said cause from the district court of the United States for the district of Hawaii to the Supreme Court of the United States.

I further certify that I hereto annex and herewith transmit the original citation on appeal in said cause.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of twelve dollars and sixty
43 cents ($12.60), and that the same was paid by the appellant, territory of Hawaii.

In witness whereof I have hereunto set my hand and seal of said district court this November 25, 1901.

[SEAL.] WALTER B. MALING,
Clerk of the United States District Court for the Territory of Hawaii.

44 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Osaki Mankichi and F. M. Brooks, his attorney, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America at the city of Washington in the District of Columbia, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the district court of the United States for the Territory of Hawaii, wherein the Territory of Hawaii is appellant and you are appellee, to show cause, if any there be, why the order and judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness, the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 16th day of November, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

MORRIS M. ESTEE,
United States District Judge of the Territory of Hawaii.

Attest:
[SEAL.]

W. B. MALING,
Clerk District Court of the United States for the Territory of Hawaii.

45 UNITED STATES OF AMERICA,
Territory of Hawaii, ss:

I hereby certify that I served the within citation upon Osaki Mankichi on the 16th day of November, 1901, at the city of Honolulu, island of Oahu, in the Territory of Hawaii, by then and there delivering to the said Osaki Mankichi, personally, a true copy of the within citation.

And I further certify that I served the within citation on the within-named F. M. Brooks, attorney for said Osaki Mankichi, on the 16th day of November, 1901, at the city of Honolulu, island of Oahu, Territory of Hawaii, by then and there delivering to said F. M. Brooks, personally, a true copy of the within citation.

Dated at Honolulu, Territory of Hawaii, this 16th day of November, 1901.

E. R. HENDRY,
United States Marshal.

Marshal's fees.
Service two citations.
Mileage.

46 (Indorsed:) 14. In the district court of the United States of America, Territory of Hawaii. In the matter of the application of Osaki Mankichi for a writ of habeas corpus. Citation. Filed Nov'r 16, 1901, at o'clock and minutes m. W. B. Maling, clerk. By , deputy clerk.

47 (Indorsement on cover:) File No. 18365. Hawai' Territory, D. C. U. S. Term No. 512. The Territory of Hawaii, appellant, vs. Osaki Mankichi. Filed January 10, 1902.

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IN THE SUPREME COURT OF THE UNITED STATES.

IN THE MATTER OF THE APPLICATION OF OSAKI MANKICHI FOR A WRIT OF HABEAS CORPUS.

APPEAL OF THE TERRITORY OF HAWAII FROM THE DISTRICT COURT OF THE UNITED STATES IN AND FOR SAID TERRITORY.

STIPULATION.

It is hereby stipulated and agreed that the following facts shall form a part of the record in this case on appeal and be submitted to the Supreme Court for consideration:

I.

The defendant made an application for a writ of habeas corpus to Circuit Judge Gear, who granted the writ and discharged the prisoner upon the ground that his trial, conviction, and sentence were void, being in violation of Articles V and VI of the amendments to the Constitution of the United States.

II.

The Territory appealed to the supreme court of the Territory, who reversed the decision and judgment of the circuit judge. Associate Justice Perry, who, when circuit judge, found the true bill upon the indictment against the defendant, and who tried and sentenced the prisoner, sat in the supreme court of the Territory and heard the appeal and rendered a decision therein. The Territorial supreme court was composed of a chief justice and two associate justices. Associate Justice Galbraith dissented.

E. P. DOLE,
Attorney-General of the Territory of Hawaii.

The 28th of Feb'y, A. D. 1902.

GEO. A. DAVIS,
Counsel for Appellee.

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